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## BOOK REVIEWS

the delinquent act. The author devotes a goodly number of pages to the old philosophical discussion—determinism versus free will. In his last section, on the practical outcome of the application of the retribution theory, a great many points are concisely considered. It is set forth that practical affairs, at least for the most part, are better adjusted under the guidance of this concept. This would come out particularly in the question of the individualization of punishment according to the kind and form of the offense as opposed to the individualization according to the potential or actual dangerousness of the intent. If one were to judge solely by intent it would frequently come within official ken that an attempted crime had back of it just as evil a forethought as a completed crime.

Altogether too short a space is devoted to the postulates of the author's concept in regard to the treatment of juvenile delinquents. The main point to be considered before application of the indeterministic and retributive theory is whether or not the young person shows the "symptoms" of having freedom of the will. Upon this diagnosis will hinge the treatment; if positive, then the retribution theory should obtain. In this matter the author avoids technical questions and details, and perhaps for his contention it is well that he does so.

So firmly is Koehler grounded in his beliefs that he warns against compromises. Every tendency to get into the way of adjusting criminal affairs by the appeal to intent signifies for him distinct damage to the interests of the constitutional government as it exists according to the culture-ideal of today.

The reviewer's criticism will be foreseen by anyone who knows anything of how his own opinion has come to be formed on this whole subject. Objection is general and fundamental rather than detailed. One might easily pick flaws in the various corners of Koehler's structure, but the underlying trouble seems to the reviewer to be a curious assumption that all is known regarding the causation of criminality. Just why we should be so cock-sure and keen to decide between dogmas on this subject when we are so ignorant with regard to most other affairs in which humanity is deeply concerned seems not at all clear. One who is engaged in the practical situation feels keenly the need for less dogma and for vastly more thorough-going study of causations and of the efficacies of measures already undertaken; such a one realizes strongly that the greatest need for the formulation of anything like ultimately valuable principles of criminal law is light—more light.

Chicago.

WILLIAM HEALY.

VERBRECHENSOPPHLAXE UND STRAFRECHT VON DR. JOHANNES NAGLER, PROFESSOR IN BASEL. Leipzig: Wilhelm Engelmann, 1911. Pp. 265.

One naturally expects a scholarly work from the pen of one of the chief editors of the "*Kritische Beiträge zur Strafrechtsreform*," and in this we are far from being disappointed. Professor Nagler has given us a polemic on the theoretical considerations underlying criminal law which it would be presumptuous to attempt to criticise or even thoroughly review in anything short of an extended essay. The reviewer must be

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content with stating the nature and limitations of the work and with giving its main features; those who are interested must read the work with care for themselves. Particularly with care because of the author's condensed style and his dealing in short shrift with the statements and theories of many authors.

The entire work is devoted to the consideration of the fundamental principles of criminal law and as such is, of course, theoretical and philosophical. A strong division is all along drawn between the classical and the so-called modern school of thought, and one does not have to read far in the polemic to see where the author stands. He realizes keenly that this is an age in which all things are made new and that in the turmoil and tendency to change for change's sake it is more than ever necessary to hold fast to well-founded leading principles. He recognizes that the present-day attitude of both the laity and the profession towards criminal matters is that of demanding protection for society. He gives reason after reason why the mere cry for protection should not stampede us into the upset of old and well tried legal considerations.

The scope of the work can well be indicated by the section headings and some of the chapter titles. He divides it into, first, *The Prophylaxis of Crime*; second, *The Relation Between Prophylaxis and Criminal Law*; third, *The Difference Between the Act of Repression and of Prevention*. One notable chapter, it seems to the reviewer, occurs under the curious caption of "*The Dangers of Protection*"—the author meaning, of course, the dangers of following the idea of the mere protection of society. In this chapter he makes three main points: that there is danger in the over use of the protection idea—first, to the guaranteed freedom of the individual; second, in the use of an abstract concept of what is anti-social for application to any given concrete act; and third, in the doubtful possibility of getting administration of the law corresponding to the ideal of prevention. He discusses elsewhere the fundamental concepts of punishment, the true principles which underlie the teachings of the retributionists, the elements of safety which exist in the idea of punishment as such and the relation between repression and prevention.

From the author's final summing up we learn that he believes that, practically as well as theoretically, on account of internal differences as well as of practical outcomes, the idea of punishment and of protective measures as such must not be confused, even though one may believe with John Stuart Mill that the aim of punishment is curative, albeit the administration of it is painful. The attempt to infuse the principles of criminal law with the ideas of special prevention must always lead to a confusion of juridical foundations. The great aim of the classical school has ever been that of the prophylaxis of crime, the nipping of the criminal in the bud, but the difficulty of actual prevention that same school has always seen. The golden age when there will be no criminals is not attainable; what can be done will be done when the criminalistic tide is partially stemmed. A sound principle to guide us is certainly that of social safety, but safety obtained only through efforts at criminal prophylaxis—in opposition to carrying out the mere idea of the protection of society.

The reviewer can not turn from this scholarly work, and the feel-

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ing of the inadequacy of his cursory review, without one contention, namely, that the author, in his probably conscious limitation of his polemic to theories underlying criminal law, utterly fails to do justice to the richness of human experience. It would be gratifying if one found somewhere in the volume acknowledgment that we are at the very beginning of things in regard to the understanding of criminality. The development of psychology, particularly the possibility of the future in the understanding of genetic processes, may be very great and already there has been acquired a mass of information, the realization of which gives one a feeling that any such discussion of bare theories does not tally with the varieties of human experience in criminality. The reviewer dares to say that growing appreciation of the underlying springs of conduct may well lead to the overthrow of many theoretical principles of criminal law, and that after a time we may see the value of the well known lines from the poet whom Nagler himself draws on for a foreword, "Grau, theurer Freund, ist alle Theorie und grün des Lebens goldner Baum."

Chicago.

WILLIAM HEALY.

THE INFLUENCE OF NEWSPAPER PRESENTATIONS UPON THE GROWTH OF CRIME AND OTHER ANTI-SOCIAL ACTIVITY. By *Frances Fenton*. Chicago: University of Chicago Press, 1911. Pp. 96.

This thesis presents the results of a study of certain representative American newspapers with a view of ascertaining the amount of anti-social matter contained therein and its percentage of the whole news matter. There is obviously a question of classification involved on which there might be much difference of opinion. This seems to be allowed for, however, in the author's final statement of the results. She states that the highest percentage of the kind of news which is an obvious medium of suggestion considered on the basis of a comparison of news alone is 20.02, and the lowest 5.91; while an estimate based upon all mention of anti-social news makes the highest percentage 42.47, and the lowest 18.90. A study is also made of certain specific cases in which newspaper publications definitely influenced anti-social acts. The author concludes that the newspaper leads to anti-social activity in a number of ways. "These may be summed up by saying that it influences people directly, both unconsciously and consciously, to commit anti-social acts. It also has a more indirect anti-social influence on public opinion during criminal trials through its accounts of these trials and through its partisan selection of evidence; and, finally, it aids in building up anti-social standards, and thus in preparing the way for anti-social acts."

The author urges that suggestive anti-social matters should be excluded from the newspaper; not that all mention of such matters should be excluded; indeed it is desirable that the public be informed on crime and anti-social matters. But the news which gives them the information should not be couched in terms or details which make it criminally suggestive or factually misleading but should be confined to correct statements of fact. It is suggested that we read new and adequately enforced laws defining strictly the power of newspapers to deal with news, analogous to those regarding the use of the mails, billboards, etc.; that public opinion needs to be educated to support